

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EMORY LEWIS BENTLEY,

Plaintiff,

v.

Case No. 07-CV-10537-DT

DEPUTY ROWLEY, et al.,

Defendants.

**ORDER DENYING *EX PARTE* MOTION FOR ALTERNATE SERVICE AND
REQUIRING PLAINTIFF TO SHOW CAUSE WHY CASE SHOULD NOT BE
DISMISSED FOR FAILURE TO EFFECT SERVICE AND LACK OF PROSECUTION**

On February 5, 2007, Plaintiff Emory Lewis Bentley initiated this complaint against Defendants Deputies Rowley, Hankamp, Campbell and Wallace and Defendant County of Washtenaw/Washtenaw County Sheriffs' Department. On May 30, 2007, Plaintiff filed an *ex parte* motion for alternate service. Plaintiff alleges that Defendants are evading service, and thus alternate service is appropriate in this case. Having reviewed Plaintiff's motion and accompanying affidavit, the court disagrees. Plaintiff asserts that because the individual Defendants are undercover police officers, "Plaintiff's counsel was unable to locate any address for the Defendants." (Pl.'s Mot. at 1.) Plaintiff further contends that Defendant Washtenaw County would not voluntarily release the individual Defendants' addresses. (*Id.* at 1-2.) Plaintiff, however, does not make any further assertions as to what steps Plaintiff took to attempt to locate Defendants' personal addresses. While Plaintiff attaches to his motion the affidavit of a private process server, it does not appear that the process server was retained until April 18, 2007, over two months after the complaint was filed. Plaintiff does not explain

his delay in seeking professional help in serving Defendants who Plaintiff should have known at the inception of the lawsuit may have been difficult to locate. The process server's affidavit indicates only minimal attempts to locate and serve Defendants over the limited time period of approximately two weeks. The court is not persuaded, under these circumstances, either that Defendants are attempting to evade service or that Plaintiff's counsel has acted diligently in attempting to serve Defendants. Accordingly, the court finds that Plaintiff is not entitled to the relief he seeks, and service through alternate means is not warranted in this case.

Further, Plaintiff Federal Rule of Civil Procedure 4(m) provides that if service is not effectuated within 120 days the court shall dismiss the action without prejudice as to that defendant. Eastern District of Michigan Local Rule 41.2 likewise provides that if the parties have not taken action within a reasonable time, the court may enter an order dismissing the case for lack of prosecution. Accordingly, pursuant to Fed. R. Civ. P. 4(m) and E.D. Mich. LR 41.2,

Plaintiff Emory Lewis Bentley is ORDERED to SHOW CAUSE, in writing, on or before **June 27, 2007**, why the case should not be dismissed without prejudice for lack of service and failure to prosecute.

IT IS FURTHER ORDERED that Plaintiff's *ex parte* motion for alternate service [Dkt. # 2] is DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 14, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 14, 2007, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522